

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3532 OF 2003

Pleasure Resorts Pvt. Ltd. and another).. Petitioners

Versus

State of Maharashtra and others).. Respondents

Mr.Shekhar Naphade with Mr.Madhav Jamdar for the
Petitioners.

Mr.S.R.Nargolkar, A.G.P. for Respondent Nos.1 to 3.

Mr.R.G.Ketkar for Respondent Nos.4 to 7.

**CORAM: H.L. GOKHALE AND
SMT.NISHITA MHATRE, JJ.**

DATED: 28TH SEPTEMBER 2004

P.C.:

1. Heard Mr.Naphade with Mr.Jamdar for the
Petitioners. Mr.Ketkar appears for Respondent Nos.4 to
7, the contesting Respondents. Mr.S.R.Nargolkar, A.G.P.,
appears for Respondent Nos.1 to 3.

2. The Petition is filed by contending that whereas
the sewerage treatment plant was the original purpose of
the acquisition of the concerned plot of land owned by
the Petitioners now that purpose has ceased to exist and
it is only the pumping station which is sought to be put
up on this plot of land. Mr.Naphade, learned Counsel
appearing for the Petitioners, has submitted that the

only course open to the Respondent No.4 Pune Municipal Corporation in this situation is to proceed under Section 50 of the Maharashtra Regional and Town Planning Act, 1966 and seek a deletion of the reservation of designated land and then issue a fresh Notification for acquisition. Mr.Ketkar, learned Counsel appearing for Respondent No.4 Municipal Corporation, has on the other hand submitted that the project is not given up. It is the pumping station which is a part of this on-going project which is now to be set up on this land. He has drawn our attention to the affidavit filed by the Municipal Commissioner affirmed on 22nd June 2004. In paragraph 4 of this reply, it has been clearly averred that the construction of the treatment sewerage plant was proposed to be cancelled at one stage. However the same was not ultimately cancelled and therefore the reservation on the plot in question continues. Mr.Naphade has relied on the judgment of the Division Bench of this Court in the case of *The Industrial Development and Investment Co. Pvt. Ltd. and another vs. State of Maharashtra and others* reported in **1988 Mh.L.J. 1027** which lays down that if the particular purpose as mentioned for which declaration under Section 6 of the Land Acquisition Act, 1894 was made has ceased to exist, then the acquisition will come to an end. The very judgment has been upturned by the Apex Court in the case of *Municipal Corporation of Greater Bombay vs. The Industrial Development and*

Investment Co. Pvt. Ltd. and others reported in **1996 (11) SCC 501** wherein the Apex Court has in terms held that land required for a public purpose may be used for another public purpose on account of change or surplus of the land. The acquisition validly made does not become invalid by change of user or change of user in the scheme. In fact in that case what was purposed was the sewerage purification plant but the land was used for construction of the housing project amongst others for the Municipal Corporation of Brihanmumbai. In the present case, it has been clearly averred on the affidavit that the purpose continues and therefore there is no need for any such deletion as suggested by Mr.Naphade under Section 50. We would like to note that another Petition was filed earlier being Writ Petition No.5631 of 2002 wherein another Division Bench by its order dated 23rd October 2002 had declined to entertain it and a statement of the learned Counsel for the Pune Municipal Corporation was recorded that the proposal to set up the treatment plant has not been cancelled. The position continues to be the same. No reason to interfere. Petition dismissed. The interim order passed therein consequently stands vacated.

3. Civil Application No.1219 of 2004 moved by the Petitioners in this Petition will also stand dismissed and the order of status quo therein will stand vacated.

4. Mr.Naphade, learned Counsel for the Petitioners, makes a request that the ad-interim order in terms of prayer (d) passed on this Petition on 18th November 2003 as well as the order of status quo passed on the aforesaid Civil Application on 25th May 2004 be continued for a period of twelve weeks. Mr.Ketkar opposes this request. However, inasmuch as the ad-interim order has been running from 18th November 2003, both these orders will continue for a period of eight weeks hereafter.

5. Certified copy expedited.

(H.L. GOKHALE, J.)

(SMT.NISHITA MHATRE, J.)